

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SHIRLEY ANNE MCCULLEY,

Petitioner

v.

5:05-CV-241 (WDO)

GUY HICKMAN, WARDEN,

Respondent

ORDER

Before the Court is Petitioner's Notice of Appeal (doc. 24) from this Court's order, which, adopted the recommendation of the United States Magistrate Judge that Petitioner's 28 U.S.C. § 2254 petition be denied.

The Eleventh Circuit Court of Appeals has mandated that a habeas petitioner's notice of appeal be construed as an application for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under § 2253(c) (2000), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

For the reasons stated in the Magistrate Judge's recommendation and the aforesaid order accepting the same, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right by demonstrating that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

further." **Miller-El v. Cockrell**, 537 U.S. 322 (2003), citing **Slack v. McDaniel**, 529 U.S. 473, 484 (2000). Accordingly, the application for a COA is **DENIED**.

Having denied Petitioner's application for Certificate of Appealability the request to proceed *in forma pauperis* is hereby **DENIED AS MOOT**.

SO ORDERED, this 23^{rj} day of February, 2006.



WILBUR D. OWENS, JR.
UNITED STATES DISTRICT JUDGE

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